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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

Epic Games Inc. v. Google LLC et al., Case
No. 3:20-cv-05671-JD

Case No. 3:21-md-02981-JD

**DECLARATION OF ELIZABETH DALY
IN SUPPORT OF GOOGLE'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL TRIAL EXHIBITS**

Judge: Hon. James Donato

1 I, Elizabeth Daly, declare as follows:

2 1. I am currently employed by Google LLC (Google) as a Director within Google's
3 Legal organization. I graduated from the University of Michigan Law School in 2007 and have
4 been an in-house counsel for Google since 2011. I am a member of the New York State Bar.

5 2. Since 2015, I have been the Google in-house counsel principally responsible for
6 supporting the legal aspects of Google's negotiation and analysis of the Information Services
7 Agreement (ISA), including the Joint Cooperation Agreement (JCA), with Apple Inc. (Apple). I
8 also frequently receive information from Google employees regarding Google's evaluation of
9 Apple's strategic objectives and Google's efforts to market its products and services to consumers
10 who use Apple devices.

11 3. In my role as in-house counsel, I periodically evaluate the commercial sensitivity
12 of information relating to these subjects and assess whether disclosing particular information
13 would harm Google's competitive standing. That includes, for example, determining whether to
14 seek confidential treatment for materials submitted to regulators and deciding whether
15 information shared with business partners should be subject to a non-disclosure agreement.

16 4. I understand that the plaintiff in this case intends to use particular documents in
17 open court, and I have reviewed certain of those documents because they relate to Google's
18 relationship with Apple and other topics I am familiar with from my work at Google.

19 5. I have reviewed Exhibit 1492 which appears to be a copy of the amendment to the
20 ISA between Google and Apple dated September 30, 2016. Although the agreement has
21 subsequently been amended, that amendment was primarily an extension of the existing terms of
22 the 2016 amendment and, consequently, the majority of the terms of this 2016 amendment
23 remain in effect today. The agreement is non-public, and its terms are highly commercially
24 sensitive. Public disclosure of the agreement is likely to cause significant harm to Google's
25 competitive standing by, for example, giving Google's competitors insight into how Google
26 structures this deal with Apple, which Google queries result in a revenue share payment to
27 Apple, and the commercial terms of the partnership. That kind of disclosure would, among other
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1 things, give competitors a one-sided advantage in preparing their own bids to provide services
2 that Google presently provides under the agreement. Additionally, Google has similar
3 arrangements to promote Google Search with other third-party browsers. Public disclosure of the
4 agreement is likely to cause significant harm to Google's competitive standing by, for example,
5 giving Google's competitors insight into how Google might have structured similar deals with
6 other partners beyond Apple, which would, among other things, give competitors a one-sided
7 advantage in preparing their own bids to provide services that Google presently provides under
8 these other third-party browser agreements.

9 6. I have reviewed Exhibit 1489, which appears to be a copy of the JCA between
10 Google and Apple dated May 15, 2014. Certain portions of the JCA remain current, operative,
11 agreed upon terms between Google and Apple and reveal terms and conditions set forth in the
12 ISA. Thus this agreement is non-public, and its terms are also highly commercially sensitive.
13 Public disclosure of this agreement is likely to cause significant harm to Google's competitive
14 standing by, for example, giving Google's competitors insight into how Google structures this
15 deal with Apple, which Google queries result in a revenue share payment to Apple, and the
16 commercial terms of the partnership. That kind of disclosure would, among other things, give
17 competitors a one-sided advantage in preparing their own bids to provide services that Google
18 presently provides under the agreement. Additionally, Google has similar arrangements to
19 promote Google Search with other third-party browsers. Public disclosure of the agreement is
20 likely to cause significant harm to Google's competitive standing by, for example, giving
21 Google's competitors insight into how Google might have structured similar deals with other
22 partners beyond Apple, which would, among other things, give competitors a one-sided
23 advantage in preparing their own bids to provide services that Google presently provides under
24 these other third-party browser agreements.

25 7. As noted, Google separately negotiates agreements with a number of companies
26 to promote Google Search in those companies' browsers. The terms of those agreements differ
27 from each other (and from the JCA and ISA referenced above) as each partner expresses its own
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1 preferences and objectives, leading to different commercial compromises. Google's competitive
2 standing would likely be harmed significantly if all of Google's current and potential partners
3 were aware of the terms that Apple negotiated with Google. The harm to Google's competitive
4 standing would be especially severe if only Google, and not its competitors, were required to
5 disclose an agreement like the one in question. Under those circumstances, Google's competitors
6 would be able to continue engaging in ordinary confidential commercial negotiations with Apple
7 and other browser developers, yet all involved would know the outcome of Google's negotiation.

8 8. Due to the commercial sensitivity of the JCA, ISA, and amendment thereto,
9 access to the agreement is limited within Google. These restrictions generally exist to ensure
10 compliance with confidentiality obligations to Apple relating to the agreement and to provide
11 separation between the Google employees responsible for negotiating with third party browser
12 partners (such as Apple and Mozilla) and the Google employees who negotiate agreements with
13 Android partners (such as Samsung and Motorola). The fact that Google generally restricts
14 access to the agreements in this way further informs my conclusion that publicly disclosing these
15 agreements with Apple would affect Google competitive standing in relation to its competitors
16 and many of its partners.

17 9. I have reviewed Exhibit 6190, which appears to be a December 20, 2018 email
18 thread with the subject line "Tim Briefing Feedback," and Exhibit 1493, which appears to be a
19 document entitled "Apple Partnership Strategy," dated October 29, 2020. These documents are
20 confidential, and public disclosure of them is likely to cause significant harm to Google's
21 competitive standing for similar reasons set forth above. The email at Exhibit 6190 includes
22 various contractual terms that Google employees contemplated or evaluated in negotiating the
23 ISA with Apple. Exhibit 1493 similarly includes discussion of financial terms and contractual
24 provisions of agreements with Apple relating to Cloud, Ads, and other products and services
25 offered by Google. In my experience supporting commercial transactions, the negotiating team
26 will often deliberate internally about various constructs and generate models that reflect potential
27 alternatives before making a proposal to the counterparty, which in this case was Apple. If Apple
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1 had access to these materials in advance of future negotiations regarding whether to renew or
2 amend the ISA, or any of the other agreements referenced in these documents, then it would have
3 a one-sided advantage by virtue of having seen the range of financial terms and other scenarios
4 that certain Google employees modeled.

5 10. Furthermore, disclosure would cause significant competitive harm in relation to
6 competitors that wish to provide services that Google presently provides under the ISA - or
7 under the Cloud and Ads agreements. For example, other search engines would not only have
8 access to terms that Google agreed to in a recent agreement with Apple, but also a range of terms
9 and scenarios that were analyzed internally based on confidential Google information. And as
10 discussed above in connection with the ISA with Apple, disclosure of these confidential
11 documents would also likely undermine Google's competitive standing by affecting negotiations
12 with its other partners, who would be able to use Google's internal analyses of terms and
13 scenarios that were evaluated in negotiations with Apple to assess how Google may be
14 approaching its negotiations with those other partners.

15
16 I declare under penalty of perjury that the foregoing is true and correct. Executed on the 13th day
17 of November, 2023, in Manhasset, New York.

18
19 DocuSigned by:
Elizabeth Daly

20 149ZD4DDC42E4E7
Elizabeth Daly